

1 Hon. Robert S. Lasnik
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UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON AT SEATTLE

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10 *In re YARDI REVENUE MANAGEMENT*
11 *ANTITRUST LITIGATION.*

12 MCKENNA DUFFY and MICHAEL
13 BRETT, individually and on behalf of all
14 others similarly situated,

15 Plaintiffs.

16 v.
17

18 YARDI SYSTEMS, INC., *et al.*,
19 Defendants.

20 No. 2:23-cv-01391-RSL
21
22 REPLY IN SUPPORT OF NON-
23 RESIDENT LLC DEFENDANTS'
24 MOTION TO DISMISS BASED ON
25 LACK OF PERSONAL
26 JURISDICTION

(Consolidated with Case Nos.
2:24-cv-01948; 2:24-cv-02053)

ORAL ARGUMENT REQUESTED

Plaintiffs do not dispute that none of the Non-Resident LLC Defendants have ties to the state of Washington that would support a finding that they purposefully directed activities at the state. *See Schwarzenegger v. Fred Martin Motor Co.*, 374 F.3d 797, 802 (9th Cir. 2004). None is “at home” in Washington and none manages properties, rents to residents, or otherwise conducts any business in the state. *See* Non-Resident LLC Defs.’ Mot. to Dismiss Based on Lack of Personal Juris. (Dkt. # 380) (“Mot.”) at 9–11 and accompanying declarations. Plaintiffs do not dispute any of these facts.

Plaintiffs claim, however, that the lack of any contacts between Non-Resident LLC Defendants and the state of Washington is immaterial because, under Section 12 of the

Clayton Act, this Court has personal jurisdiction over all Defendants given their contacts with the United States. Plaintiffs are mistaken.

Plaintiffs do not (because they cannot) cite a single case in which a court considered the issue and held that Section 12—which by its plain and unambiguous terms applies only to “proceeding[s] under the antitrust laws against *a corporation*,” 15 U.S.C. § 22 (emphasis added)—authorizes personal jurisdiction over LLCs or other non-corporations. The cases Plaintiffs do cite—all of which assume, without considering or analyzing the issue, that Section 12 applies to non-corporations—provide no support for Plaintiffs’ position. Perhaps recognizing this, Plaintiffs fall back on misguided policy-based concerns about how anything but their expansive (and non-textual) interpretation of the statute will imperil effective antitrust enforcement. But requiring plaintiffs to commence antitrust lawsuits in courts permitted by due process to hear their claims would hardly lead to the dire consequences Plaintiffs claim.

In sum, this Court does not have personal jurisdiction over Non-Resident LLC Defendants under Section 12 of the Clayton Act and Plaintiffs' claims against those Defendants must be dismissed.

I. No Court Has Held that Section 12 of the Clayton Act Authorizes Personal Jurisdiction over LLCs.

Plaintiffs cannot establish the existence of sufficient contacts between Non-Resident LLC Defendants and the state of Washington to permit the exercise of personal jurisdiction under the state’s long-arm statute. *See* Mot. at 12–18. Plaintiffs concede this. In their Opposition, Plaintiffs do not even attempt to argue that any of the Non-Resident LLC Defendants are “at home” in Washington, such that general jurisdiction would exist, or that any of them purposefully directed activities at the state, providing a basis for a finding of specific jurisdiction.

1 Plaintiffs instead rely solely on Section 12 of the Clayton Act as the basis for this
 2 Court's jurisdiction, a statute that by its terms applies only to antitrust lawsuits "against a
 3 corporation." 15 U.S.C. § 22. Non-Resident LLC Defendants' opening brief identifies
 4 several cases, including recent decisions by other district courts in the Ninth Circuit, that
 5 have held expressly that Section 12 of the Clayton Act does not apply to non-corporations,
 6 including LLCs like Non-Resident LLC Defendants. *See* Mot. at 18–20 (citing, e.g.,
 7 *GovernmentGPT Inc. v. Axon Enter. Inc.*, No. CV-24-01869-PHX-SMB, 2025 WL 743998,
 8 at *7 (D. Ariz. Mar. 7, 2025) ("Based on the statute's plain language . . . there is no question
 9 that Section 12 does not apply to [defendant LLC].")).

10 In response, Plaintiffs assert that "courts 'routinely' interpret a variety of business
 11 organizations to be incorporated under the scope of Section 12." Pls.' Opp. to Moving
 12 Defs.' Mot. to Dismiss Based on Lack of Personal Juris. (Dkt. # 426) ("Opp.") at 10. But
 13 none of the cases they cite specifically considers, much less decides the question presented
 14 here: whether a statute that by its plain terms applies only to "corporation[s]" should also
 15 be read as applying to other entities (including LLCs) that are not corporations. In
 16 *D'Augusta v. American Petroleum Institute*, for example, the Ninth Circuit stated in a
 17 footnote that the district court had erred in finding a lack of personal jurisdiction over a
 18 limited partnership defendant because Section 12 of the Clayton Act authorizes personal
 19 jurisdiction "over any corporate antitrust defendant with minimum contacts with the
 20 nation," 117 F.4th 1094, 1100 n.1 (9th Cir. 2024). But the specific question at issue here
 21 (whether Section 12 applies to non-corporations) was not even raised in *D'Augusta*, and the
 22 court therefore did not consider, analyze, or decide the issue. Instead, it appeared to simply
 23 assume that Section 12 applied to the limited partnership defendant before it.¹ All of the
 24 other cases Plaintiffs cite suffer from the same problem, because none considers the relevant

25
 26 ¹ Regardless, because the court in *D'Augusta* also stated expressly that it "affirmed the
 district court's order of dismissal on other grounds," its observations concerning Section 12
 of the Clayton Act are only dicta.

1 question and holds that Section 12 of the Clayton Act should be interpreted to apply to non-
 2 corporations.²

3 Plaintiffs' cited authority is entitled to no weight—particularly in the face of an
 4 unbroken line of cases that specifically considered the relevant question and determined
 5 that Section 12 does not apply to non-corporations. *See Mot.* at 18–20. Cases like those
 6 cited by Plaintiffs that merely “stumble into decisions on questions neither raised nor
 7 discussed by the parties . . . are not treated as authoritative on those . . . nonlitigated points.”
 8 *Lum v. City & Cnty. of Honolulu*, 963 F.2d 1167, 1170 n.1 (9th Cir. 1992); *see also Cooper*
 9 *Indus. v. Aviall Servs., Inc.*, 543 U.S. 157, 170 (2004) (“Questions which merely lurk in the
 10 record, neither brought to the attention of the court nor ruled upon, are not to be considered
 11 as having been so decided as to constitute precedents.”). Accordingly, because the specific
 12 issue of whether Section 12 applies to non-corporations was “never raised or discussed” in
 13 the cases on which Plaintiffs rely, those courts’ “unstated assumption” on that “non-litigated
 14 issue[]” does not provide valid legal support for Plaintiffs’ theory. *Sakamoto v. Duty Free*
 15 *Shoppers, LTD*, 764 F.2d 1285, 1288 (9th Cir. 1985); *see also Medialdea v. L. Off. of Evan*
 16 *L. Loeffler PLLC*, No. C09-55, 2009 WL 3246799, at *3 (W.D. Wash. Oct. 2, 2009) (finding
 17 case cited by plaintiff offered “no precedential holdings” on a “non-litigated issue”).

18 Plaintiffs cite no case holding that Section 12 of the Clayton Act authorizes personal
 19 jurisdiction over non-corporations, because no such case exists. Without that support,
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21 ² See *McCarthy v. Intercontinental Exch., Inc.*, No. 20-cv-08532, 2022 WL 4227247, at *2
 22 (N.D. Cal. Sept. 13, 2022) (finding personal jurisdiction under Section 12 based on contacts
 23 with the United States but *without considering whether Section 12 reaches non-*
24 corporations); *In re Hard Drive Suspension Assemblies Antitrust Litig.*, No. 19-md-02918,
 25 2020 WL 5135816, at *2 (N.D. Cal. Aug. 31, 2020) (same); *S&W Forest Prods. Ltd. v.*
Cedar Shake & Shingle Bureau, No. C19-202, 2019 WL 3716457, at *3 (W.D. Wash. Aug.
 26 7, 2019) (same); *Shields v. Fed'n Internationale de Natation*, 419 F. Supp. 3d 1188, 1202
 (N.D. Cal. 2019) (same); *Cont'l Auto. Sys., Inc. v. Avanci, LLC*, No. 19-cv-02520, 2019
 WL 6735604, at *6 (N.D. Cal. Dec. 11, 2019) (finding that potential transferee district
 would have personal jurisdiction based on contacts with the United States but *without*
considering whether Section 12 reaches non-corporations).

1 Plaintiffs offer this Court no basis to exercise personal jurisdiction and their claims against
 2 Non-Resident LLC Defendants must be dismissed under Federal Rule of Civil Procedure
 3 12(b)(2).

4 **II. Antitrust Defendants Will Not “Avoid Antitrust Liability” If the Court
 5 Interprets Section 12 Consistently with Its Plain Language.**

6 Lacking any caselaw holding that Section 12 authorizes personal jurisdiction,
 7 Plaintiffs resort to predictions of dire consequences for antitrust enforcement if “any
 8 corporation could . . . avoid antitrust liability in every federal court outside of its home
 9 district merely by converting to an LLC.” Opp at 6. But this is neither Non-Resident LLC
 10 Defendants’ position nor is it true. Even under a proper reading of Section 12, LLCs can
 11 be sued in antitrust cases in any jurisdiction in which plaintiffs can establish the existence
 12 of personal jurisdiction based on a traditional minimum contacts analysis. Plaintiffs
 13 themselves refer to two cases against Google LLC in which the government established
 14 personal jurisdiction and litigated cases successfully based on allegations that Google
 15 transacts business in the forum jurisdiction and sells products and services to consumers
 16 throughout the United States.³ Because the jurisdictions in which a non-corporation
 17 defendant could be sued for antitrust violations would match the jurisdictions in which it
 18 could be sued for almost every other cause of action, Plaintiffs’ contrived concern about the
 19 impact of interpreting Section 12 faithful to its language (and consistent with every case
 20 that has addressed the issue) is overblown and should be rejected.

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 23 ³ See Am. Compl. ¶¶ 16, 18, *United States, et al. v. Google LLC* (“Google I”), No. 1:20-cv-
 24 03010 (D.D.C. Jan. 15, 2021) (Dkt. # 94); Am. Compl. ¶¶ 307, 309, *United States, et al. v. Google LLC* (“Google II”), No. 1:23-cv-00108 (E.D. Va. Apr. 17, 2023) (Dkt. # 120). Plaintiffs assert incorrectly that the government relied on Section 12 as the basis for personal jurisdiction in its cases against Google. Opp. at 11. The government’s jurisdictional statements in both cases are simply that “[t]he Court has personal jurisdiction over Google,” without reference to Section 12. But the government relies on Section 12 (along with 28 U.S.C. § 1391) as the basis for venue “because Google transacts business and is found within this District.” See Am. Compl. ¶ 307, *Google I*; Am. Compl. ¶ 16, *Google II*.

1 **III. Allegations that Non-Resident LLC Defendants Conspired with Other
2 Defendants Do Not Save Plaintiffs' Claims.**

3 Plaintiffs suggest vaguely that allegations of Non-Resident LLC Defendants'
4 participation in a conspiracy support this Court's exercise of personal jurisdiction. *See Opp.*
5 at 8–12. But Plaintiffs are again incorrect. Washington has explicitly rejected conspiracy
6 as a basis for obtaining personal jurisdiction under its long-arm statute. *Silver Valley*
7 *Partners, LLC v De Motte*, 400 F. Supp. 2d 1262, 1268 (W.D. Wash. 2005) (“If an out-of-
8 state defendant’s activities do not meet the test for imposition of either general jurisdiction
9 or specific jurisdiction, traditional notions of ‘fair play and substantial justice’ would be
10 abused by hailing that defendant into a local court on the mere claim that the defendant was
11 a co-conspirator with a defendant whose activities do meet the test.”); *Hewitt v. Hewitt*, 78
12 Wn. App. 447, 896 P.2d 1312, 1316 (1995) (disapproving of conspiracy jurisdiction, *i.e.*,
13 jurisdiction over a nonresident conspirator based on a resident co-conspirator’s acts). And
14 the suggestion that the alleged sharing of information about Non-Resident LLC Defendants’
15 own rental activities outside of Washington could have had any impact on rents or renters
16 in Washington lacks common sense and plausibility and cannot be credited in any event.
17 *See Ashcroft v. Iqbal*, 556 U.S. 662, 679 (2009) (observing that courts must call on their
18 “judicial experience and common sense” in evaluating the plausibility of complaints).⁴

19 **IV. No Amendment Could Cure Plaintiffs’ Pleading Failure and Their Claims
20 Against Non-Resident LLC Defendants Should Be Dismissed with Prejudice.**

21 Plaintiffs neither allege any facts showing contacts between Non-Resident LLC
22 Defendants and the state of Washington nor contest the facts Non-Resident LLC Defendants
23 submitted demonstrating the lack of any such contacts. Because sufficient contacts with
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25 ⁴ Plaintiffs’ themselves recognize that renters typically prioritize certain locations when
26 choosing where to live, *see Consol. Class Action Compl.* (Dkt. # 226) ¶¶ 180, 203, meaning
that rental rates for apartments owned or operated by Non-Resident LLC Defendants in distant
states can have no competitive impact on rental rates charged for apartments in Washington.

1 the state of Washington do not exist to render jurisdiction in this Court proper, any
2 attempted amendment would be futile and Plaintiffs' claims against Non-Resident LLC
3 Defendants should be dismissed with prejudice. *See Cali v. Rosenberg*, 45 F.3d 435, 1994
4 WL 721802, at *3 (9th Cir. 1994) (affirming with-prejudice dismissal where plaintiffs
5 conceded they could not supply facts needed to support claim, making any amendment
6 futile); *Gilchrist v. First Nat'l Bank of Omaha*, No. C17-5104, 2018 WL 317267, at *3
7 (W.D. Wash. Jan. 8, 2018) (dismissing with prejudice because the court could "conceive of
8 no amendment that would" address pleading deficiencies "and Plaintiff has proposed
9 none").

10 **IV. Conclusion**

11 For the foregoing reasons, and those stated in Non-Resident LLC Defendants'
12 opening brief, Plaintiffs claims must be dismissed with prejudice under Federal Rule of
13 Civil Procedure 12(b)(2).

1 * * *

2 RESPECTFULLY SUBMITTED this 2nd day of June, 2025.

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CERTIFICATE OF COMPLIANCE

The undersigned, counsel of record for Grubb Properties, LLC and McWhinney Property Management, LLC certifies that this brief contains 2,038 words, in compliance with LCR 7(e)(4).

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